IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10572 of 2001

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT SANCHAR NIGAM LIMITED - Petitioner(s)
Versus
LEARNED PRESIDING OFFICER & 1 - Respondent(s)

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Appearance :
MR SANDIP C SHAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR JV JAPEE for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 28/09/2007

ORAL JUDGMENT

The petitioner M/s.Bharat Sanchar Nigam Limited (hereinafter referred to as, **“the Nigam”**) has preferred the present petition under Article 227 of

the Constitution of India against the judgment and award dated 16th July, 2001 passed by the Central Industrial Tribunal in Reference (ITC) No.30/1998. By impugned award, the Nigam has been directed to reinstate the respondent no.2 workman in service and to pay him 30% of the back-wages from the date he was discharged from service till the date he is reinstated in service.

In the year 1998, the workman raised industrial dispute in respect of the termination of his service by the Nigam. According to the workman, he was engaged by the Nigam in the year 1988. After serving continuously, in the month of January, 1991 he was discharged from service without a formal order; without giving any notice; without paying him retrenchment compensation and without considering his seniority. The termination of service of the workman was thus alleged to be in contravention of Sections 25F, 25G, 25H and 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as, **“the Act”**).

The claim was contested by the Nigam. The Nigam

did admit that the workman was engaged in the year 1988 as casual labourer. The Nigam, however, denied that the service of the workman was ever terminated. According to the Nigam, the workman did not report for duty since 26th June, 1988; that the function for which the workman was engaged had since been given over to the contractor. No casual labourer was engaged by the Nigam and that the dispute raised by the workman was grossly belated.

The learned Labour Judge observed that for the period from 13th October, 1987 till 25th June, 1988 the workman had served for more than 240 days. He was, therefore, entitled to a notice of termination of service and retrenchment compensation; that it was admitted that the particular functions were being carried out by the contractor i.e. those functions were still being carried out in the establishment. The Labour Court, therefore, held that the termination of service of the workman was contrary to Sections 25G, 25H and 25N of the Act. The Labour Court was also of the opinion that as the workman had raised the dispute after a considerable delay, the

Nigam should not be shouldered with the liability to pay back-wages for the said period. Nevertheless, while making the award, the Labour Court directed the Nigam to pay 30% of the back-wages from the date the workman was discharged from service till the date he was reinstated in service. Therefore, the present petition.

Mr.Shah has submitted that though the workman alleged that he had served upto the year 1991 and that his service came to be terminated in the month of January, 1991, the workman failed to prove that he had continued to serve upto the year 1991. As per the record produced by the Nigam, the workman had served upto 25th June, 1988. Since then, he did not report for duty on his own volition. The considerable delay in raising the dispute has also not been explained by the workman. In absence of such explanation, the learned Labour Judge has erred in entertaining the stale claim raised by the workman. He has further submitted that pending this petition, the workman had claimed wages last drawn by him in consonance with Section 17B of the Act. The Nigam could establish

before this Court that the workman was engaged in some contract works and that he was self-employed. He has submitted that in that view of the matter, the Labour Court was neither justified in ordering reinstatement of the workman nor in awarding back-wages as aforesaid.

I do agree with Mr.Shah. In view of the specific defense raised by the Nigam, it was the duty of the Labour Court to record specific finding, whether the workman had abandoned the service on his own volition or his service was terminated as alleged. I am afraid that the Labour Court has, without recording any finding on the point, proceeded on the premise that the service of the workman was terminated by the act of the Nigam. Though, it was not the case of the workman that while terminating his service, any of his juniors was retained in service and inspite of the specific case of the Nigam that the concerned functions are carried out by the contractor and no other casual labourer was appointed, the learned Labour Judge has erred in holding that the termination of the service of the workman was made in

contravention of Sections 25H, 25G and 25N of the Act. Besides, though the Tribunal observed that the Nigam should not be saddled with the liability to pay wages for the period during which the workman had not raised the industrial dispute, while awarding the back-wages, the Tribunal has awarded 30% of the back-wages for the entire period.

I am of the opinion that the Tribunal below has not only entertained a stale claim without any explanation for the delay but, has also erred in deciding the reference on presumption and conjectures. As recorded hereinabove, the claim made by the workman was required to be rejected on the ground of delay alone. Moreover, on evidence also the workman failed to prove that his service was terminated in the year 1991 as alleged. In absence of proof of alleged termination of service, no order for reinstatement in service could have been made in favour of the workman.

For the aforesaid reasons, the petition is allowed. The impugned judgment and award dated 16th

July, 2001 passed by the Central Industrial Tribunal in Reference (ITC) No.30/1998 is quashed and set-aside. The claim made by the workman stands rejected. Rule is made absolute. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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